

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Creation of a Low
Power Radio Service)

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
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MM Docket No. 99-25

RM-9208

RM-9242

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**COMMENTS
OF
NASSAU BROADCASTING PARTNERS, L.P.**

NASSAU BROADCASTING PARTNERS, L.P. ("Nassau"), by Counsel, pursuant to the *Notice of Proposed Rule Making ("NPRM")*, FCC 99-6 (released February 3, 1999), hereby submits these Comments in the above-captioned rule making proceeding regarding the proposal to create a new low power radio service. In support hereof, Nassau submits the following:

1. Nassau is the licensee or permittee of the following Radio Stations: WHWH-AM (Princeton, New Jersey), WPST-FM (Trenton, New Jersey), WHCY-FM (Blairstown, Pennsylvania), WNNJ-AM and WNNJ-FM (Newton, New Jersey), WADB-AM and WJLK-FM (Asbury Park, New Jersey), WBBO-FM (Ocean Acres, New Jersey), WSUS-FM (Franklin, New Jersey), and WTTM-AM (Princeton, New Jersey).

2. As will be shown herein, Nassau believes there is little merit to the creation of a new commercial low power radio service and that these matters must be carefully addressed so that the integrity of the broadcast signals of all current full power radio stations should not be compromised. Nassau believes that the NPRM proposal to relax the technical protection standards between stations is both foolish and dangerous -- the Commission can still institute a

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modest new noncommercial low power radio service by maintaining significant first and second adjacency protection standards. Nassau would like to take this opportunity to provide comments on this, and other, aspects of the NPRM.

3. At the outset, Nassau recognizes that the Commission is trying to afford more broadcast opportunities to those persons and entities that are currently precluded from broadcasting for financial, spectrum scarcity and other reasons. However, the Commission must balance these goals with its historic responsibility of maintaining adequate technical protection to existing service but not precluding additional allotments or assignments by protecting vast areas not actually served. *See, FM Broadcast Stations, 66 RR 2d 338 (1989).*

4. Spectrum Considerations: The Commission's stated decision not to designate a particular FM frequency or frequencies for one or more low power services is prudent. Nassau strongly believes that no current full service broadcast licensee or permittee, or FM translator or booster licensee or permittee, should be forced off-air or displaced to a new frequency as the result of the institution of any new low power radio service. Although many current secondary radio service providers assumed certain regulatory risks in applying for, and then constructing, their new facilities, it would be patently unfair -- and a violation of due process -- if any current broadcaster were forced off-air as the result of retroactive application of new rules.

5. The Commission's NPRM seeks comment on the kind of status that should be afforded any new low power radio service that is authorized in this rule making proceeding. The Commission proposes to authorize both 1,000 watt stations and 100 watt stations, otherwise referred to as LP1000 and LP100. Nassau believes that LP1000 stations should be afforded primary status and be required to comply with all day-to-day regulations now imposed

upon full service broadcasters/¹, but that LP100 (and any LPFM stations below 100 watts) should only be afforded secondary status with minimal day-to-day regulatory requirements. The Commission should not lose sight of its goals with respect to low power radio service -- to afford currently deprived persons and entities the opportunity to provide localized radio service. If small LP100 and microradio stations are overly burdened with government regulations, it will be difficult (if not impossible) for these stations to survive. However, Nassau believes that the Commission should take steps to require LPFM stations to provide local, issues-oriented programming or risk the loss of their FCC license./²

6. LPFM should be a noncommercial service: Paragraph number 24 of the NPRM questions whether LPFM should be restricted to noncommercial applicants, be open to commercial service, or both. The only fair way for educators, small groups and minorities to be afforded an opportunity to commence LPFM service would be for the service to be noncommercial. There would be no auction fees to chill applicants, or regular regulatory fees to burden the financial well-being of these small-time broadcasters. And, there would be more emphasis on community-oriented programming rather than commercial enterprise programming. Nassau believes that, if the Commission truly wants to create new broadcast opportunities for persons or entities now deprived from

¹ For example, LP1000 stations should be required to maintain a properly located Main Studio, maintain a Public File, file FCC ownership reports and compile Quarterly Issues-Programs Lists. LP100 stations should also be required to maintain a Public File and compile Quarterly Issues-Programs Lists.

² Nassau believes that LPFM stations should be required to submit periodic program summary reports so that the Commission, as well as the general public, can verify the localized performance of all LPFM stations. Since the Commission wants to institute this new low power radio service to foster local programming, it must take steps to enforce its stated goals.

providing broadcast service, it must avoid the chilling effect that the commercial service, auction selection process would invariably create. As the result of the commencement of the auction selection process for new full service broadcast opportunities, educators, small businesses and minorities are likely to be shut out of most such opportunities. While the Commission has not yet finalized its auction rules for full service commercial broadcast opportunities, it is a reasonable assumption that deep-pocketed parties will out bid smaller businesses, educators and minorities on most opportunities. Money should not dictate who is going to provide noncommercial LPFM service. The Commission should not repeat the regulatory mistakes that now pervade full service broadcasting, with just a hand few of very deep-pocketed companies owning and operating hundreds of broadcast stations, thereby resulting in the Commission and the Department of Justice instituting more and more inquiries with respect to market dominance and unfair competition.

7. Equipment certification: In paragraph number 35 of the NPRM, the Commission questions whether there should be an FCC transmitter certification requirement for LPFM and microradio service. The answer must be "yes." Nassau believes that all low power radio service providers must be subject to strict type-accepted equipment requirements and concomitant FCC-inspection requirements to maintain the integrity of the broadcast business. The mere fact that the Commission is proposing some relaxation of the technical protection standards in this proceeding further warrants the need of type-accepted equipment to minimize as much as possible the threat of technical interference to current broadcasters./³

³ The Commission must remain mindful of the fact that current FM translator and booster stations must operate in strict compliance with various technical rules and requirements, or they face the wrath of other broadcasters who can request the Commission shut them down. With respect to LPFM, the

8. Interference Protection Criteria: In paragraphs numbered 38-50 of the NPRM, the Commission offers several ideas regarding interference protection criteria that could be implemented for LPFM. The Commission acknowledges that there is likely to be a large volume of LPFM applications, and that in and of itself requires the Commission to closely consider what it should do in this proceeding and not err on the side of convenience for the sake of rushing this new service to market. While the Commission proposes to eliminate second and third adjacency protection standards, Nassau believes that second-adjacency protection standards should be maintained, and that a contour overlap methodology should likewise be retained. While the NPRM indicates that a contour overlap methodology is resource intensive, the Commission owes it to the integrity of the broadcasting business to carefully initiate this new radio service. Broadcasters throughout the country have collectively invested billions of dollars in the construction and operation of their radio stations -- the Commission cannot jeopardize these businesses for the sake of convenience and expediency.⁴

9. Second and Third Adjacent Channel and IF Protection: While the Commission proposes to eliminate second and third adjacent channel protection requirements, Nassau believes that at least second adjacent channel protection standards should be maintained for any power level employed by LPFM stations. Given the higher potential for interference associated with the

Commission must maintain the regulatory authority to shut these new stations down if their operations are non-compliant and/or cause electrical interference with other full power and low power broadcasters. If the Commission is not ready to "police" this new broadcast service, then it should not be implemented.

⁴ Nassau agrees that the elimination of third-adjacency protection standards poses little risk to broadcasters since the areas of potential interference is very small and would occur within very close proximity of the LPFM transmission facility.

proposed LP1000 class, Nassau believes that it is also necessary to maintain third adjacent channel protection requirements for any LPFM station operating with a power exceeding 100 watts. At a bare minimum, if further studies determine that third adjacent channel interference caused by LPFM stations is of no concern, spacing requirements must be adopted to prevent any class of LPFM station which has primary status from receiving interference from higher powered stations operating on third adjacent channels, which is a very real possibility in a situation where a 1000 watt or lower LPFM facility would be located in close proximity to a third adjacent channel station operating with powers 50 to 100 times greater than that employed by the LPFM station. Similarly, since intermediate frequency interference is much more destructive, potentially impacting every FM station in an area (regardless of the frequency on which they operate), it is imperative that IF protection standards be established for any LPFM station which operates with a power exceeding 100 watts.

10. Preclusion Issues: The adoption of any LPFM service which includes stations having primary status must include provisions, similar to those presently employed in FM rule making proceedings, to permit involuntary frequency changes by LPFM stations in order to accommodate upgrades and other modifications by other stations when it can be shown that the public interest would be served by the proposed package of modifications. Failure to do so would run counter to the public interest by unnecessarily having a potential preclusionary impact on such upgrades and could also have the undesirable effect of promoting abusive practices, such as encouraging the filing by another party of an LPFM application whose sole purpose is to attempt to block a potential upgrade by a competitor. To insure sufficient flexibility in site selection, full power FM stations should also be permitted to employ the

provisions of Section 73.215 of the FCC Rules (the contour protection rules), including the use of directional antennas, to meet the protection requirements to primary status LPFM stations, due to the additional FAA and zoning obstacles which are normally encountered in siting the taller towers which are required for full power FM stations.

11. Ownership and Eligibility: In paragraph numbered 58 of the NPRM, the Commission asks whether newspapers, cable systems or other mass media should be permitted to own LPFM stations. Nassau disagrees with the Commission's proposal not to permit LPFM opportunities to be open to persons or entities with an attributable interest in any full power broadcast station. Nassau believes that the Commission should enforce its cross-ownership rules consistently with those that apply to full service broadcast stations, and not create any new multiple ownership restrictions solely for LPFM purposes. Inasmuch as the Commission's multiple ownership regulations are currently under review, the scope of these regulations should include equal treatment for LPFM stations.

12. Although the Commission questions whether there is a need for a national ownership cap on LPFM stations, Nassau believes such a cap is necessary so that the LPFM service is not overwhelmed by the same companies that went into a buying frenzy after implementation of the 1996 Telecommunications Act -- an act that simply accentuated the need for LPFM service since full service broadcasting is quickly becoming an exclusive club that small businesses and minorities cannot afford to join. The Commission should not make the same mistake again. And, Nassau believes there is merit to a national ownership cap on LPFM stations, whereby one person or entity

could not own more than a certain number of LPFM stations./⁵

13. Licensing Criteria: In paragraphs numbered 61 and 62 of the NPRM, the Commission questions whether LPFM operators should be required to be residents of the communities that they propose to serve. Nassau believes that the Commission must impose a strict local residency requirement for both LP1000 and LP100 applicants and licensees. Such a local residency requirement would truly ensure that LPFM service will be responsive to local issues and needs, and available to the local minority and church groups that are now being deprived of affordable broadcast opportunities. Likewise, keeping all LPFM service noncommercial will also facilitate the affordability of this new broadcast service to minorities and church groups.

14. With respect to alien ownership, Nassau believes that all LPFM stations should be subject to the statutory restrictions on alien ownership that are enumerated in Section 310(b) of the Communications Act. Likewise, the character qualifications requirements currently imposed on all full power broadcasters should apply to LPFM broadcasters, as well./⁶

15. Service characteristics: In paragraph number 68 of the NPRM, the Commission questions whether there should be a minimum local origination requirement imposed upon LPFM broadcasters. Although Nassau does not usually believe that the Commission should intrude upon the editorial judgment of LPFM broadcasters, in this instance the LPFM service is being touted as the savior of localized broadcasting. As such, there just be a local origination

⁵ Nassau also believes that a person or entity should not be permitted to own more than one LPFM station within a certain geographically defined area.

⁶ Nassau applauds the Commission in taking the position that any "pirate" radio operators that does not immediately cease and desist its illegal operations will be disqualified from applying for, owning and operating LPFM broadcast stations.

requirement otherwise LPFM broadcasters will simply subscribe to many satellite programming services and other "canned" programming, thereby diluting the localization aspect of this new radio service.

16. Miscellaneous regulations: Nassau believes that LP1000 stations should be required to broadcast full time, twenty-four hours each day. With respect to LP100 and microradio stations, they should be subject to time-share operations if they are not operated twenty-four hours each day. Since the goal of LPFM is to bring new voices into the marketplace, no LPFM broadcaster should be permitted to warehouse spectrum by operating only part-time. While LP1000 stations should be required to participate in the EAS system, LP100 and microradio stations should not be so required. Nassau believes that all LPFM stations should be required to broadcast regular station identifications.

17. The Application Process: Although the Commission's NPRM generally suggests that the application process for LPFM be simple and expedient, Nassau cautions the Commission not to rush this process along in such a manner as to invite sloppy and incomplete applications. If the Commission truly wants to bring this new radio service into market as quickly as possible, it would be prudent to adopt a "hard look" processing standard -- applications must be substantially complete and accurate or risk automatic dismissal with prejudice.

18. Finally, the Commission seeks comments on how to resolve mutually exclusive applications. If the Commission agrees with Nassau and implements a noncommercial-only LPFM service, then a lottery or arbitration selection process should be adopted. If a lottery process is adopted, Nassau believes that preferences should be awarded for applicants that are educators, individual persons or minorities, and for maximization of spectrum using an areas and population comparison of proposed noncommercial service.

WHEREFORE, the foregoing premises considered, Nassau encourages the Commission to consider these Comments with respect to the proposed institution of LPFM broadcast service.

Respectfully submitted,

**NASSAU BROADCASTING
PARTNERS, L.P.**

By: 
Cary S. Tepper

Its Attorney

Booth, Freret, Imlay & Tepper, P.C.

5101 Wisconsin Avenue, N.W.

Suite 307

Washington, D.C. 20016-4120

(202) 686-9600

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